IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.1295 of 1999

Tukaram L.Borade ... Petitioner

vs

The Commissioner Nasik
Municipal Corporation & Ors. ... Respondents

Ms.Seema Sarnaik for Petitioner
Mr.V.A.Gangal for Respondent no.1
Mr.Ashok Gade for Respondent no. 3

CORAM : R.M.S. KHANDEPARKAR
&
MRS. ROSHAN DALVI JJ.

Reserved on :
Pronounced on : 06-06-2006

ORAL JUDGMENT (Per Smt Roshan Dalvi, J)

1. The petitioner was initially appointed as a junior Engineer in the Nasik Municipal Corporation on 23rd April, 1976. The petitioner has been serving as a Dy.Engineer since 31st August, 1989. The petitioner holds a Diploma in Engineering.

2. The Nasik Municipal Corporation has degree holders as well as diploma holders serving as

Dy. Engineers. The Dy. Engineers are to be promoted as Executive Engineers. For such promotion a ratio of 90% -10% of degree and diploma holders respectively is maintained. The degree holders require an experience of 5 years (which was initially 7 years) and the diploma holders require an experience of 10 years (which was initially 12 years). One common seniority list of the degree and diploma holders was earlier maintained by the Corporation. Since 19th January, 1993 two separate seniority lists for the post of Executive Engineers – one for degree holders and other for diploma holders have been maintained. The petitioner has challenged the maintainance of the two separate lists.

3. Upon the ratio of 90-10% 6 Dy. Engineers who were degree holders were promoted to the post of Executive Engineers. The respondent no. 3 who was a diploma holder and junior to the petitioner was promoted as an Executive Engineer from the reserved category as belonging to V.J/N.T. Category.

4. The petitioner contends that since only one

out of the 10 posts could be held by the diploma holders, it becomes an isolated post and remains free from the principle of reservation as per the judgment of the Apex Court holding that solitary/isolated posts cannot be open to reservation.

5. It is the contention of the petitioner that the degree holders with 5 years experience and diploma holders with 10 years experience form one class of the persons eligible for promotion in the policy of the respondent no. 1.

6. Under the resolution dated 19th June, 1987 of respondent no. 1, the ratio between the degree and diploma holders for promotion was 50-50%. That ratio came to be changed by the resolution of the respondent no. 1 No. 272 dated 19th January, 1993 Exhibit D to the petition making it 90 % -10% for degree and diploma holders respectively. Respondent no. 1 earlier maintained one consolidated seniority list of the degree and diploma holders from January, 1993. Respondent no. 1 started maintaining two separate seniority lists for

each of them. The petitioner has made a two-fold challenge to the aforesaid resolution.

7. The resolution has been confirmed by the State Government.

8. Our attention has been drawn to section 465 (a) of the Bombay Provincial Municipal Corporation Act, 1949 under which the standing committee of the Corporation is entitled to frame regulations not inconsistent with the aforesaid Acts and Rules inter alia for prescribing the qualifications required for the appointments to posts in municipal service.

9. It is not shown by the petitioner that the degree holders and the diploma holders form the same class of engineers. On the contrary, it is to the common knowledge, and of which judicial notice is required to be taken, that the extent and quality of knowledge of degree holders is vastly different from that of the diploma holders. The degree holders and diploma holders form a distinct and separate class. This is despite the fact that a greater extent of experience is required of diploma

holders to be eligible for promotion. Consequently, the challenge to the policy decision of the respondent no.1 changing the ratio from 50%-50% to 90% -10% by resolution No.272 dated 19th January, 1993 Exhibit D to the petition cannot be sustained. The Court cannot interfere with such a policy decision in the absence of total arbitrariness of malafides being disclosed therein.

10. The respondents have explained in their respective affidavits how 9 posts of Executive Engineers have been filled in since the promotion of degree and diploma holders would be 9:1. The post of Executive Engineers were filled in such as to have only one candidate from the reserved category. The respondent no. 3 was a successful candidate. He was the senior most amongst the backward class community holding the post of Dy. Engineer since 1989. He is the only candidate from the reserved category to be appointed as an Executive Engineer. In his affidavit, the respondent no. 3 has stated how no S.C./S.T.candidate was available or appointed to the post of Executive Engineer and that out of the

appointments made only he belonged to the reserved category.

11. It is the petitioner's contention that since 10% of the posts are reserved for diploma holders for every 10 appointments only one appointment could be made for a diploma holder and consequently it becomes an isolated post. That contention is entirely incorrect. The provision for 10 % of the candidates would allow more than 10 candidates to be appointed at a given time. In such a case, more than one candidate would be a diploma holder. The post is therefore not an isolated post. It is the contention on behalf of the respondents that the candidates from the reserved category may be degree or diploma holders. Incidently in the instant case, it is a diploma holder. For the purpose of reservation for these posts, 6 posts are from the open category. One post reserved for S.C. and one for S.T. have not been filled in. The appointment of respondent no. 3 to the one post reserved for V.J./N.T. which is filled in is therefore correct and proper.

12. It is also contended on behalf of the respondents that the petition suffers from laches more specially for challenge to the post held by the respondent no. 3 made in 2005. Two separate seniority lists have been maintained since 19th January, 1993 by the resolution Exhibit D to the petition. That resolution has been challenged only in 1999 when the petition was filed. A specific challenge to the promotion of the respondent no. 3 has been made only by an amendment to the petition on 18th December, 2005. The respondent no.3 has been promoted since 1st September, 1997. He served for 7 years before his promotion was challenged. The petition therefore suffers from laches and delay. The challenge to the promotion of respondent no. 3 cannot be maintained after 7 years.

13. On all the aforesaid counts, the petition fails. Rule is discharged. There shall be no order as to costs.

(R.M.S.Khandeparkar, J)

(Smt Roshan Dalvi, J)